PUBLIC PROSECUTOR

v.

TEH GEOK HOCK

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[CRIMINAL TRIAL NO. 27 OF 1984]
24 OCTOBER 1987

CRIMINAL LAW AND PROCEDURE: *Trafficking in dangerous drugs - Section 39B(1)(a) Dangerous Drugs Act 1952 - Defence - Purchase for own consumption - Inconsistent evidence by accused - Presumptions - Section 37(d) and Section 37(da)(i) of said Act.*

The accused was a passenger seated in the rear of a car when it was stopped by the police. When he was searched by the police, a package containing ten small plastic packets containing heroin was found underneath the front part of his underpants. The accused was thereafter charged with trafficking in a dangerous drug, to wit, 36.97 grammes of heroin in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952. The prosecution relied on the act of concealment of drugs on the accused person, that he was presumed to have possessed the drug and that he was presumed to have known its nature and that he was presumed to have trafficked in it.

The accused put forward a defence that being a drug addict there was no intention to traffic in the drugs at all as he had them for his own consumption.

Held:

[1] On a balance of probabilities the accused was trafficking in the drugs as charged and that the drugs were not for his own consumption because the ten packets of heroin seized from him were sealed.

[2] The accused's testimony was full of inconsistencies not only in respect of his cautioned statement but also and especially in respect of his reasons for his purchase of the drugs and for concealing the drugs for when confronted with a fact situation from which an inference could be drawn tending to incriminate him he would quickly invent another fact situation to extricate himself.

[Accused sentenced to death.]

Legislation referred to:
Dangerous Drugs Act 1952, ss. 37(d), (da)(i), 39B(1)(a), (2)

For the public prosecutor - Siti Zainab, DPP
For the accused - Sidney Augustine (K. Segara with him); M/s. Sidney Negrin & Co.

JUDGMENT

KC Vohrah J:

The accused was charged as follows -

> That you on 20 December 1983 at about 12.50 a.m. in front of premises No. 8, Tepian Loke Yew, Off Jalan Loke Yew, in the Federal Territory of Kuala Lumpur, did on your own behalf traffic in a dangerous drug, to wit, 36.97 grammes of heroin, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952, and that you have thereby committed an offence punishable under s. 39B(2) of the same Act.

There was no dispute by way of cross-examination that the accused was a passenger sitting in the rear of a car when it was stopped by the police at the place mentioned in the charge and that when he was searched by PW1, Inspector Yusof, a package in which there were 10 small plastic packets of a substance containing heroin was found underneath the front part of his underpants. The heroin came to 36.97 grammes.

PW1 said that he and Detective Corporal Rahman (PW2), and other police personnel Khabri and Sakimin went to Jalan Loke Yew on 20 December 1983 at about 12.30 a.m. He was in his car together with Sakimin near the junction leading to Tepian Loke Yew whilst Rahman was with Khabri in Rahman's car also parked nearby. While waiting there he saw a white motor car, a Honda Civic bearing registration number AAK 2646, drive into Tepian Loke Yew and stop in front of "Paris Pub". He saw the car driven by Rahman move towards this car and it stopped on the left side of the car. PW1 said that simultaneously he rushed in with his car and stopped at the back of the white car. He said that he and Sakimin then rushed out of his car and went up to the driver's side of the car. He found the side window of the car wound up and he knocked on the driver's window and showed his authority card. He requested the driver and the 3 passengers, all male Chinese, to come out of the car. Since Rahman's car was parked along the left side of this car close to it the driver and passengers had to alight from the right side of the car. In the meantime Rahman and Khabri came over and assisted PW1 and Sakimin to guard the 4 persons.

A body search was then made on all 4 persons. PW1 said that when he searched the accused he felt the presence of a package "hidden in the front of his trousers." PW1 inserted his hand into the top of front part of the accused's jeans and from underneath the front part of the underpants he brought out a package wrapped in a piece of Chinese newspaper. In the well lit area he unwrapped the package in front of the accused and the other 3 persons and the police personnel. Wrapped in the piece of Chinese newspaper (PW5) were 10 plastic packets (P6A to J), each containing a substance suspected to be heroin. The accused and the other 3 persons were then brought to the Jalan Bandar Police Station together with the package that had been seized.

PW2, Detective Corporal Abdul Rahman, corroborated the evidence of PW1 on the events relating to the laying of the ambush, the ambush itself, the search of the 4 male Chinese and the discovery of the package on the accused's person.

Both PW1 and PW2 were not cross-examined on the events from the point of laying the ambush by the police party up to the discovery of the package on the accused's person and its seizure by PW1.

PW1 said that he handed the exhibits which he had seized to Inspector Razali (PW3), the investigating officer of the case. The exhibits included one car (P11) and the key to the car (P10).

PW3 confirmed receiving the exhibits. He said that he placed the package comprising the piece of Chinese newspaper and 10 plastic packets containing a substance suspected to be heroin into an envelope which he marked "A" (P4). He said he put into another envelope which he marked "B" (P12) the underpants of the accused which he had obtained from the accused. He sealed and handed these two envelopes to the government chemist Mr. Khoo (PW5) on 22 December 1983. He said he received them back from Mr. Khoo on 28 May 1984 together with a chemist report. He then kept the exhibits in a store till they were produced in Court on the first date of trial. The chemist confirmed receiving envelopes A and B from PW3 and confirmed returning them duly sealed on 28 May 1984 with the contents save that

in envelope A the 10 packets were empty packets and there was an additional plastic packet which contained the substance found in the 10 packets less what was expended for tests and analysis for the heroin. Woman Police Constable Azlina, PW6, confirmed receiving the two envelopes and the key from Inspector Razali for safe keeping in the store and the surrender of them to him on the day of hearing.

The chemist, PW5, said that he found the underwear to be free from heroin or morphine. He said the 10 plastic packets contained a total of 86.74 grammes nett of a light brown powdery substance which on analysis he found to contain 36.97 grammes of heroin.

At the end of the case for the prosecution the evidence established that the 10 packets of heroin were found on the accused's person, next to his skin and he was in a state of fright when the package containing the 10 plastic packets of heroin was recovered from him. These facts indicated that he knew the incriminating nature of the substance that was in his possession. In any event the accused is deemed under s. 37(d) of the Dangerous Drugs Act 1952 to have known its nature until the contrary is proved. The heroin being 36.97 grammes the accused is presumed under s. 37(da)(i) to have been trafficking in the drug until the contrary is proved. And I called upon him to make his defence.

The accused elected to give his evidence on oath. He admitted being searched by the police. He admitted to the hiding of the 10 plastic packets of heroin in his underpants and their discovery by the police. He said he was and still is a drug addict. And he said in one breath that the drugs which had been seized were for his consumption and in another breath he said they were for his and his friend's consumption. And he denied he trafficked in the drugs.

He called two police witnesses (Inspector Saliman, DW2, and Detective Sergeant Loh, DW3) to testify that he made a cautioned statement to the police and he called 3 witnesses (Lim Chee Kim (DW4), Lee Yoke Ming (DW5), Chong Hooi Loon (DW6) to testify that, on the day he was arrested he together with these 3 witnesses and one other were out having a good time and he could not have been involved in trafficking. He also called his brother (DW7) and mother (DW8) to testify that he was a drug addict before his arrest.

The accused testified that he was a daily paid welder earning RM30 per day. He said he worked for 28 days. He testified that prior to his arrest he had been a drug addict for 2 to 3 years and that at the date of the trial he was still a drug addict.

He said that on 19 December 1983 at 5 p.m. he went to Sungai Wang Plaza and bought 10 plastic packets of heroin at RM600. Then he went home.

I quote what he said as being typical of his answers throughout his testimony.

He was asked in examination-in-chief,

> In buying these 10 packets of heroin what did you do?

He replied,

> I smoked it.

He was asked,

> All of it?

He answered,

> I shared the 10 packets with my friends.

But of course the accused was found with the 10 packets containing heroin under his underpants and he did not use any one of them for the smoking. This aspect of the evidence is discussed later in relation to what else he had to say on the matter.

The accused said that at 8 p.m. one Ah Kam (DW4) came to his house to borrow his car to go for a ride with him. He had earlier stated that he had bought a car; his mother (DW8) had given some money for the downpayment. His purpose for buying the car was to hire it out at RM50 per day. He himself did not know how to drive.

He said he then went for a ride with Ah Kam. Ah Kam drove the car. They went to one Ah Loon's house where they picked Ah Loon (DW6) and one Ah Ming (DW5). They all went to Pertama Complex as Ah Loon had had an appointment to meet one Yim Saer at that place. They did meet Yim Saer there. And after that all 5 of them went to an "A & W" establishment at Ampang Road for some snacks. After the snacks they took a ride to the vicinity of the Guiness Stout factory. And then they went to Paris Pub where they ordered drinks and had 2 or 3 bar hostesses to keep them company. Then Yim Saer insisted that he wanted to go home and they took Yim Saer to the accused's house. The accused loaned Yim Saer his motor cycle to go home on his own. The rest went to ease themselves and they then drove back to Paris Pub as they were particularly fond of one of the bar hostess there. When they arrived there they were arrested by the police and the 10 packets of heroin were found on him under his underwear. This was the story of the accused.

His friend Lim Chee Kim alias Ah Kam (DW4) confirmed that on 19 December 1983 at about 8 p.m. he went to the accused's house to borrow the accused's car to go for a drive with the accused and that they went to the house of Ah Loon (DW6) and picked Ah Loon and Ah Ming (DW5). All these 3 witnesses, DW4, DW5 and DW6, confirmed that they went to meet Yim Saer at Pertama Complex as Ah Loon had made an appointment to see him. They confirmed meeting with Yim Saer, going to "A & W" at Ampang for snacks, going for a drive to Sungei Way (where the Guiness Stout factory was located), going to Paris Pub where they had drinks and where they had bar hostesses for company, their going back to the accused's house in order that Yim Saer could borrow the accused's motor cycle to go home, and their driving back to Paris Pub and their arrest.

On a general basis I can accept their evidence and the evidence of the accused as regards what they described as having taken place between 8 p.m. on 19 December 1983 up to the time of their arrest on 20 December 1983 but the evidence did not throw any light on the accused's defence that he was not a trafficker.

In his defence the accused also said that he was a hard core addict and his mother (DW8) and his elder brother (DW7) confirmed the accused's addiction to heroin. They stated that there were occasions when the accused was found smoking heroin in his room with his friends; and that both of them made attempts to wean him off the habit. I accept their evidence that the accused was a drug addict on the day of his arrest and that in all probability his addiction was quite severe. But that is not to say that he having been a drug addict could not therefore have been a drug trafficker. I now come to the evidence that the 10 packets were for his consumption.

His drug addiction according to him required ½ a packet of heroin - the reference to "packet" is a reference to a packet similar to the 10 packets found on his person. If he had 10 packets one would expect that they should last him 20 days.

But in his evidence he said they would last him 30 days. His assertion that they would last him 30 days was to bolster his reason for having bought 10 packets instead of purchasing his supply of ½ a packet. But he also said he bought the 10 packets to share with his two friends and that they had contributed towards their purchase. I shall deal with this aspect of the evidence of contributions by two friends towards the purchase price later but suffice it to state at this stage that he also stated that he had to share the drugs with his friends. But surely with half a packet for his own consumption per day and the friends sharing the remainder or part of the remainder in one packet the supply of 10 packets would not even last 20 days let alone 1 month.

Coming back to the events prior to his arrest he said that the last time he smoked heroin before he left the house was 7.30 p.m. in his house with 2 other friends, not the 4 who were with him in the car subsequently. He was asked by his Counsel,

> 10 packets of heroin - what were they for?

He replied,

> They were meant for my own consumption.

Then he shifted ground and said that they were to be shared with his two friends. He said he had been in the habit of sharing the heroin with his two friends and that the 3 of them took turns to buy fresh supplies. Yet earlier on under cross-examination he said he did not ask for payment when he gave drugs to his two friends. And he said he gave them a treat whenever he had a substantial supply.

Under cross-examination he said that on that day he had contributions from his friends to buy 10 packets of heroin worth RM600. When asked why he did not give his friends their share of the drugs to keep he replied that after the purchase of the 10 packets they consumed part of it in the house and his friends asked him to keep the remainder. When confronted with a photograph (P3D) showing that the 10 packets of heroin seized from him were sealed he said he meant they had consumed the small quantity that he had with him beside the 10 packets.

He shifted ground again when he was asked if he shared that with his friends and he replied that he smoked it himself.

The story then took another turn in regard to this earlier statement that his two friends smoked heroin that night with him. Under cross-examination he said they were supposed to come to check on his purchase of the drugs that night but they did not turn up.

It has also to be noted that he shifted ground as regards who paid for the drugs he purchased. Under cross-examination he agreed that when he paid RM600 for the 10 packets of heroin that took 90% of his monthly earnings (which he had agreed was about RM700 to RM800 nett per month). Later, while still under cross-examination he was asked how it was that he had the substantial sum of RM600 on that day (i.e. 19 December and not the end of the month) he gave the reason as "I got contributions from both my friends to enable me to buy the 10 packets." His evidence was certainly clear as regards the contribution for the purchase that each of the two friends had a share of the drugs. Thus again he gave inconsistent evidence.

We now come to the evidence why he kept the 10 packets of heroin concealed under his underpants. He said he would carry the one month supply of the drug for 1 month concealed in his underpants, even when he went to work. The reasons? First he said he did not keep

the drugs in the house because his mother knew he was a drug addict and he was afraid she would discover the drugs and throw them away. He was also afraid that the drugs could be stolen. He reiterated all these under cross-examination and when asked who would steal the drugs he said he was afraid his friends would steal the drugs. He however agreed that his friends did not have the key to his room and if he locked his room they could not have access to it. He was asked why he did not lock the drugs in his room and he replied circuitously that he hid the drugs in the hall when his mother was not around and when she discovered the drugs she would take them away. Then he was asked by the Court if it could be found in the hall why then was it not locked in his room and he said, this time, that he was afraid his elder brother would find the drugs and throw them away. He said that prior to the purchase of the month's supply he bought small quantities on a daily basis. He said, and I wish to re-state his evidence which I had recounted earlier, that after his purchase of the 10 packets of drugs his two friends "consumed part of the drugs in my house and my friends asked me to keep the remainder." It will be remembered that the photograph showed that the 10 packets of drugs were sealed. As was stated earlier he shifted ground and stated that his two friends consumed the small quantity he had beside the 10 packets. And he then changed his story and said that the two friends did not turn up that night. So what was the reason for concealing the drugs on his person? According to the chemist the 10 packets held 86.74 grammes nett of a substance which contained 36.97 grammes of heroin. 10 packets of 86.74 grammes of powder wrapped in newspaper constitute a fairly bulky package and the accused wanted to carry the package for 1 month. And bear the discomfort and inconvenience of it being next to the skin even at work!

Mr. Sivasegara for the accused said that he was silly to have done that and that he kept the stuff as best as he could for his insatiable cravings. Was he really that silly? Would he risk 30 days of having incriminating heroin found on his person? Admittedly he did answer that he did not know that it was an offence to be in possession of drugs but clearly that is absurd. Under cross-examination he was asked if he had heard of many people being arrested for possession of drugs and he replied he did not read the papers. He admitted however of hearing common talk of people being caught for smoking heroin or ganja! If he had to avoid the drugs being taken by his mother or brother or being stolen by his friends and if he did not know it was an offence of being in possession of drugs why the necessity of hiding them underneath his underpants. He could have easily kept them in his pockets.

In his defence the accused also relied on a cautioned statement made to DW2, Inspector Saliman. The accused said he made the statement voluntarily to Inspector Saliman. But strangely in respect of some parts of the cautioned statement which did not coincide with his testimony he said they were not true as either he was not in a clear state of mind as he was craving for drugs at that time and he was trembling slightly or, in respect of one aspect of the statement, that as a result of the recording officer's insistence he made an admission which was not the truth. In the cautioned statement he had stated that Ah Kam had come to his house to borrow his car and they picked Ah Loon and Ah Ming. This coincides with his testimony. There was however no mention of Yim Saer in the cautioned statement nor of his going to Pertama Complex or of his going to an A & W establishment. Instead there was a reference to the four of them going to Sungai Wang. This aspect of the statement the accused said was not true. He said 5 of them went to A & W. He agreed that the statement that they went to Paris Pub after a joy ride in the car was correct. The statement in the cautioned statement that after that they went out for a joy ride he said was not true. He said that part which said then they went back to Paris Pub was true although the further statement

that it was closed was not true. He agreed he admitted in the cautioned statement to being a drug addict and that he smoked ½ packet of heroin a day which he bought at RM40. In the cautioned statement was this question,

> Mengapa dadah yang didapati pada kamu itu banyak?

The reply recorded as given by the accused was this,

> Sebab saya hendak jual kepada Saw Chai yang bekerja di Paris Pub.

The accused denied having made this statement during his examination-in-chief. He said he was not in a clear state of mind at that time as he was craving for drugs when he gave this statement. He said he did not know a person by the name of Saw Chai in Paris Pub and that he, the accused, had the drugs for his own consumption and not for sale. Under cross-examination the accused again showed how inconsistent he was. At first he reiterated that he did not make the statement that he was intending to sell the drugs to Saw Chai and when asked whether the police made up the story he said he made up the name of Saw Chai,

> "At time of recording statement each time I stressed that the drugs were meant for my own consumption the recording officer insisted that I was trying to sell. **Finally I made up this name Saw Chai for the recording officer.**"

In the next breath however he said he was not sure if he did tell the recording officer that he intended to sell the drugs of Saw Chai.

The intention of using the cautioned statement was to show corroboration that the accused was having a good time with his friends as was testified to by him and his friends and that there was no intention to traffic in the drugs at all as he had them for his own consumption. But it is clear that these statements which tended to incriminate him he dismissed as not being true or having given when his mind was clouded. My distinct impression of his testimony was that when he was confronted with a fact from situation which an inference could be drawn tending to incriminate him he would quickly invent another fact situation to extricate himself and as a result his testimony become full of inconsistencies as was pointed out not only in respect of his cautioned statement but also and especially in respect of the reasons for his purchase of the drugs and the reasons for concealing the drugs.

One other aspect in regard to the cautioned statement. The investigating officer, PW3, was cross-examined as to whether he went to Paris Pub during his investigations and he replied he did not. If he did not go to Paris Pub would that have showed that Saw Chai did not exist? But he was not specially asked about Saw Chai and it was not part of the case of the prosecution case before its case was closed that the drugs were for Saw Chai. The prosecution relied on the act of concealment of drugs on the accused's person, that he was presumed to have possessed the drug and that he was presumed to have known its nature and that he was presumed to trafficked in it. And his defence is that he was not trafficking in it but that the drugs were for his own consumption.

Having viewed the totality of the evidence of the prosecution and of the defence I am satisfied on a balance of probabilities that the accused was trafficking in the drugs as charged and that the drugs were not for his own consumption. And I convict him on the charge.

Also found at [1988] 1 CLJ 551